

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Aug 24, 2020

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAVIER RODRIGUEZ TIJERINA,
JR.,

Defendant.

NO: 2:20-CR-36-RMP-1
2:08-CR-2135-RMP-1
2:19-CR-115-RMP-1

PRETRIAL ORDER AND ORDER
GRANTING MOTION TO CONTINUE

BEFORE THE COURT is Defendant's Motion to Continue Trial, ECF No. 19 in case number 2:20-CR-36-RMP-1; ECF No. 95 in case number 2:08-CR-2135-RMP-1; and ECF No. 29 in case number 2:19-CR-115-RMP-1. Defendant moves for a continuance to allow additional time to investigate this case, and to allow all three cases to track together. The Government does not object to a continuance in this matter. *Id.*

The Court finds that the ends of justice served by the granting of a continuance of the trial in this matter outweigh the best interests of the public and Defendant in a speedy trial. A trial date of September 8, 2029, would deprive

PRETRIAL ORDER AND ORDER MEMORIALIZING COURT'S ORAL
RULINGS ~ 1

1 defense counsel of adequate time to obtain and review discovery and provide
2 effective preparation, taking into account the exercise of due diligence. 18 U.S.C. §
3 3161(h)(7).

4 Accordingly, **IT IS HEREBY ORDERED:**

5 **1.** Defendant's Motions to Continue Trial, **ECF No. 19** in case number
6 2:20-CR-36-RMP-1; **ECF No. 95** in case number 2:08-CR-2135-RMP-1; and **ECF**
7 **No. 29** in case number 2:19-CR-115-RMP-1, are **GRANTED**.

8 **2.** The current trial date of September 8, 2020, is **STRICKEN** and **RESET**
9 to **November 23, 2020**, at **8:45 a.m.** commencing with a **final** pretrial conference at
10 **8:30 a.m.** All hearings shall take place in **Spokane**, Washington.

11 **3.** The current pretrial conference of August 25, 2020, is **STRICKEN** and
12 **RESET** for **November 10, 2020**, at **10:00 a.m.**

13 **4.** The Revocation of Supervised Release hearings currently set for August
14 25, 2020, in case numbers 2:08-CR-2135-RMP-1 and 2:19-CR-115-RMP-1, are
15 **STRICKEN** and **RESET** for **November 10, 2020**, at **10:00 a.m.**

16 **5.** Counsel for defense shall notify Defendant of all hearings and ensure
17 his/her attendance at court.

18 **6.** Motions to Expedite, if any, shall be filed separately and noted for
19 hearing two (2) days from the date of filing, after informing opposing counsel of
20 such.

7. Discovery motions, pretrial motions, and motions in limine shall be filed by **October 20, 2020**; responses are due **October 27, 2020**; and replies are due **November 3, 2020**. Counsel shall note their motions for hearing at the pretrial conference on **November 10, 2020**. LCrR 12(c)(2).

8. Trial briefs, requested voir dire, witness lists, jointly proposed jury instructions, and a table of proposed jury instructions shall be filed and served by **November 13, 2020**, for the Court's consideration.

(a) The jointly proposed jury instructions should address only issues that are unique to this case and shall include instructions regarding the elements of each count, any necessary definitions, and a proposed verdict form.

(b) The parties shall provide the Court electronically with a table of proposed, cited jury instructions. This table shall include:

(i) The instructions on which the parties agree;

(ii) The instructions that are disputed; and

(iii) The basis of any objection.

(iv) The jury instruction table shall be substantially in the following form:

Proposed by	Instruction #	9th Cir. Cite	Objection	Response to objection
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(c) In addition to the jury instruction table, each party shall address any objections they have to instructions proposed by any other party in a

memorandum filed by **November 13, 2020**. The parties shall identify the specific portion of any proposed instruction to which they object supported by legal authority that supports the objection. Failure to file an objection to any instruction may be construed as consent to the adoption of an instruction proposed by another party.

9. *Pretrial Exhibit Stipulation*

(a) The parties shall prepare and file, by **November 13, 2020**, a pretrial exhibit stipulation that contains each party's numbered list of all trial exhibits with the opposing party's objections to each exhibit, including the basis of the objection and the offering party's brief response. All exhibits to which there are no objections shall be deemed admitted, subject to any objections at trial that could not be raised in advance. Failure to comply with this paragraph could be deemed to constitute a waiver of all objections. Do not submit blanket or boilerplate objections to the opposing party's exhibits. These will be disregarded and overruled.

(b) The pretrial exhibit stipulation shall be substantially in the following form:

Pretrial Exhibit Stipulation

Plaintiff's/Defendant's Exhibits

Exhibit No.	Description	If Objection, State Grounds	Response to Objection
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1 (c) Exhibits shall be pre-marked with the exhibit numbers that will be used
2 at trial. Plaintiff's trial exhibits are to be numbered 1 through 199, and
3 Defendant's exhibits are to be numbered 200 and following.

4 (d) Objections to exhibits and witnesses shall be heard at the final pretrial
5 conference.

6 **9. Trial Procedures**

7 The following procedures shall be utilized at trial:

8 (a) The Court utilizes JERS (Jury Evidence Recording System) to allow
9 evidence admitted for a trial to be viewed electronically via touchscreen
10 monitor in the jury deliberation room upon the conclusion of the trial. Please
11 note that the jury will receive a verbatim copy of the JERS exhibit list. Please
12 carefully review and follow the instructions provided.

13 [JERS Instruction Sheet for Attorneys](#)

14 (b) The Court will conduct the majority of jury voir dire but allow counsel
15 fifteen minutes to ask additional questions or to do more in depth exploration
16 of issues raised by the Court;

17 (c) A total of thirteen jurors will be selected. Plaintiff shall have six
18 peremptory challenges, Defendant shall have ten peremptory challenges, and
19 each party shall have one challenge for the alternate juror. Fed. R. Crim. P.
20 24. The challenges shall be exercised alternately;
21

1 **(d)** Regular trial hours shall be from 8:45 a.m. to 12:00 noon, and 1:15 to
2 4:30 p.m.;

3 **(e)** The jurors will be provided with notebooks for note-taking and a copy of
4 preliminary instructions;

5 **(f)** Documents published to the jury by counsel shall be collected at the
6 conclusion of trial each day or following a witness's testimony regarding the
7 published document;

8 **(g)** A single photograph shall be taken of all witnesses following their
9 testimony for use by the jury to correlate a witness with the testimony he or
10 she provided. The photographs shall be maintained in a three-ring binder by
11 the Court. The photograph will have the witness's name on it and the date of
12 the witness's testimony. The photographs will be provided to the jury to assist
13 them during deliberations. Following deliberations, the photographs will be
14 destroyed by the Court and will not be a part of the record;

15 **(h)** Examination of witnesses shall be limited to direct, cross, redirect and
16 recross. Fed. R. Evid. 611(a);

17 **(i)** Counsel are encouraged to limit requests for sidebars by anticipating
18 legal and evidentiary issues so that the issues may be addressed before trial
19 begins each day, during the lunch hour, or after trial hours;

1 (j) During trial, counsel are encouraged to exchange lists of the next day's
2 witnesses and exhibits so that objections or legal issues may be anticipated
3 and resolved outside the normal trial hours;

4 (k) Counsel shall have the next witness to be called to testify available
5 outside the courtroom, to avoid delay; and

6 (l) An attorney's room for Plaintiff and for Defendant is available. Counsel
7 may inquire with the on-duty Court Security Officer for access to the room.

8 **10.** A Waiver of Speedy Trial Rights was signed by Defendant. ECF No. 20.
9 All time from the trial date of **September 8, 2020**, to the new trial date of
10 **November 23, 2020**, is **EXCLUDED** for speedy trial calculations pursuant to 18
11 U.S.C. § 3161(h)(7).

12 **13.** All time from the filing of Defendant's Motion to Continue on **August**
13 **18, 2020**, to the date of the hearing on **August 24, 2020**, is excluded for speedy trial
14 calculations pursuant to 18 U.S.C. § 3161(h)(1)(D).

15 **IT IS SO ORDERED.** The District Court Clerk is directed to file this Order
16 and provide copies to counsel.

17 **DATED** August 24, 2020.

18
19 s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
20 United States District Judge
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